

Underground Storage Tank Cleanup Fund Pay for Performance Condition of Payment

Claim Number:		
Claimant:		(the Claimant)
Site Address		(the Site)
Agency Overseeing Corrective Action		(the Regulator)

- 1. Acceptance of Condition of Payment.** To expedite site remediation and reimbursement of eligible corrective action costs and in consideration of participating in this Pay For Performance pilot program, the Claimant agrees to perform corrective action at the “Site” in accordance with the terms and conditions set forth in this “Condition of Payment” and Attachment A, “Regulatory Requirements.” Claimant’s signature herein constitutes an acceptance of this Condition of Payment. Claimant’s signature shall also signify that: (1) Claimant concurs that site characterization is complete within the “Area of Concern,” as defined in Figure 1; (2) Claimant shall bear all costs and expenses associated with any additional Site investigation to optimize a treatment system or to determine the cause of a failed treatment system without a right of reimbursement from the Underground Storage Tank Cleanup Fund (the “Fund”); and, (3) Claimant agrees to be responsible for the remediation of all petroleum contamination within the Area of Concern regardless of whether the contamination was identified during the site characterization. The Fund has concluded that the payments associated with achieving the Remediation Milestones, described in Sections 4 and 15 below, constitute reasonable and necessary costs for corrective action. Acceptance of this Condition of Payment does not waive the right of the Fund or any existing or future regulatory authority from taking any action against the Claimant, including enforcement action, with respect to the Site.
- 2. Remediation Target Levels.** The Remediation Target Levels are the concentrations to be achieved for specified chemicals (“Chemicals of Concern,” or “COCs”). These COCs and their respective concentrations are listed in Table 1 of Attachment B, “Payment Schedule.” The chemical concentrations shown are identified as “Preliminary Active Remediation Goals” (“PARGs”), which are further described in Attachment A, Section 2. However, the achievement of PARGs does not guarantee that the Regulator will necessarily determine that Site closure is appropriate or that no further action is required.
- 3. Payment Terms.** The Claimant agrees that the total fixed price contract amount for this Condition of Payment is the amount specified in Attachment B, Section 1. The Fund shall make payments to Claimant when the Fund, after consultation with the Regulator, has determined that the Remediation Milestones described in Section 4 below have been achieved. Remediation Milestone Payments shall be made pursuant to the schedule described in Section 15 below.
- 4. Remediation Milestones.** Remediation Milestones shall be determined based upon the percentage of contaminant reduction achieved in specified monitoring wells from measured Baseline Data levels. The procedure for calculating the percentage reduction is shown in the example provided in Attachment C. The Baseline Data and the monitoring wells are further described below in Sections 5, 8, and 9. The Fund agrees to authorize payments in accordance with the procedures set forth in Section 15 below. If the Fund, after consultation with the Regulator, concludes that a Remediation Milestone has been attained, then the Fund

will reimburse the Claimant the percentage of the total fixed price that corresponds to the Remediation Milestone attained. If the Fund, after consultation with the Regulator, concludes that a Remediation Milestone has not been attained, then the Claimant shall not submit an invoice for that Remediation Milestone until the Claimant has demonstrated attainment of the Remediation Milestone to the satisfaction of the Fund. The Claimant may request the Fund Manager or the Division Chief to review any Fund decision of non-attainment of Remediation Milestones by following the decision review procedures set forth in Article 5 of the Fund regulations.

5. Baseline Data. The Baseline Data for this Condition of Payment shall consist of the results of a Baseline Sampling Event of the wells identified in Attachment A, Section 3. The Baseline Data shall be used as the reference for measuring reductions in the concentrations of the COCs. The Baseline Sampling Event shall be conducted no more than thirty (30) days after the Claimant's acceptance of this Condition of Payment. All sampling and sample handling shall be conducted in accordance with the directives issued by the Regulator in accordance with requirements generally imposed on sites of this type. Split sampling, as described in Section 11 below, is required for this Baseline Sampling Event. The Claimant's results from the Baseline Sampling Event shall be provided to the Regulator and the Fund within fifteen (15) days of the Baseline Sampling Event. As explained further in Section 6 below, "Start Work Notice," the Baseline Data shall be approved by the Fund, after consultation with the Regulator, before startup of the remediation system. Alternatively, if the remediation system is already operating, then the Baseline Data shall be approved by the Fund, after consultation with the Regulator, before this project converts to a Pay For Performance project. If more than ninety (90) days have elapsed between the date of the Baseline Sampling Event and the remediation system startup, another Baseline Sampling Event must be scheduled and conducted before system startup. Split sampling is also required for this additional Baseline Sampling Event. However, the Fund, after consultation with the Regulator, may waive the requirement to conduct another Baseline Sampling Event. The Baseline Data described in this Section are to be distinguished from any baseline data that were obtained before the Claimant accepted this Condition of Payment. Such data obtained prior to acceptance of this Condition of Payment is identified hereinafter as "Pre-acceptance Baseline Data".

6. Start Work Notice. After the Fund and the Regulator have received the Claimant's Baseline Data, the Fund, after consultation with the Regulator, shall have the right, if exercised within fifteen (15) days of receipt of these data, to contest the Baseline Data, the timing of the Baseline Sampling Event, and/or the sampling method used. At this time the Regulator or the Fund may also decide to change the wells designated as Key or Perimeter Monitoring Wells, as provided in Sections 8 and 9, respectively. The Fund, after consultation with the Regulator, shall also have the right to require an additional round of split sampling, as prescribed by Section 11 below, if the results of the split sampling show a concentration difference of 100 percent or greater between the split samples when comparing the "sum of the COCs" for the wells sampled in the Baseline Sampling Event. (The method for calculating the "sum of the COCs" is described in Attachment C.) If an additional round of split sampling is required, and this additional round continues to show a concentration difference of 100 percent or greater, then the Fund, after consultation with the Regulator, may require the Claimant to perform another Baseline Sampling Event. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs incurred in conducting any additional round of split sampling or Baseline Sampling Event.

If the Fund, after consultation with the Regulator, agrees with the accuracy of the Baseline Data, including the reliability thereof, then the Fund will issue a "Start Work Notice" to the Claimant. If the Fund, after consultation with the Regulator, does not agree, then the Fund shall informally

meet with the Claimant in a good faith attempt to address the Fund's concerns. In the event such concerns cannot be satisfied, the Fund may terminate this Condition of Payment pursuant to Section 7.E below.

Unless the Fund and the Claimant agree upon other terms and conditions in writing, eligible remediation activities relating to the Scope of Work described in Section 1 of Attachment A that are incurred during Baseline Sampling and after the issuance of the Start Work Notice shall be reimbursed or paid pursuant to the terms of this Condition of Payment

7. Termination

- A. The Fund may renegotiate or terminate this Condition of Payment if a comparison of the Pre-acceptance Baseline Data and the Baseline Data of the Key Monitoring Wells shows that the sum of the COCs (identified in Table 1 of Attachment B) from these wells has **decreased** fifty (50) percent or more. Alternatively, the Fund may terminate this Condition of Payment if the Baseline Data of the Key and Perimeter Monitoring Wells show that the COC concentrations of each well are at or below their respective PARGs.
- B. The Claimant may renegotiate or terminate this Condition of Payment if a comparison between the Pre-acceptance Baseline Data and the Baseline Data of the Key Monitoring Wells shows that the sum of the COCs (identified in Table 1 of Attachment B) from these wells has **increased** fifty (50) percent or more.
- C. If the Termination provision described in Subsection A or B above is invoked, the Fund's reimbursement responsibility under this Condition of Payment shall be to pay for the eligible costs of any Baseline Sampling Event conducted and any eligible costs associated with this event. Such costs shall be paid on a time-and-materials basis.
- D. If there is evidence of a new release or migration of off-site contamination onto the Site, then the Fund, after consultation with the Regulator, shall informally meet with the Claimant to discuss this alleged change in Site conditions. If the Fund, after consultation with the Regulator, agrees that Site conditions have changed in this manner, then the Fund and the Claimant may terminate or re-negotiate this Condition of Payment. If the Fund, after consultation with the Regulator, does not agree with the Claimant that Site conditions have changed, then the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulations with respect to this matter. Failing agreement under that procedure, the Claimant may terminate this Condition of Payment. If the Condition of Payment is terminated under this provision, the Fund shall reimburse the Claimant for all eligible costs incurred to date.
- E. The Fund also reserves its right to unilaterally terminate this Condition of Payment for good cause shown upon providing fifteen (15) days' written notice to the Claimant and the Regulator and detailing the cause(s) for its proposed termination. During that notice period the Fund, after consultation with the Regulator, shall informally meet with the Claimant to discuss the cause(s) for its proposed termination in a good faith attempt to address the cause(s). Such notice period may be extended by mutual agreement of the Fund and the Claimant. If the cause(s) are not addressed to the satisfaction of the Fund before expiration of the original or extended (if applicable) notice period, then the Fund's proposed termination becomes effective at that time. The Fund reserves the right to

determine whether to reimburse the Claimant for any costs incurred up to the date of termination. Its reimbursement determination shall depend on the cause(s) for termination, including but not limited to, the Claimant's malfeasance or nonfeasance to comply with the terms of this Condition of Payment, and any intentional or negligent acts or omissions committed by the Claimant that the Fund has determined are contrary to law or this Condition of Payment.

- F.** The Fund and the Claimant each have the right to terminate or renegotiate this Condition of Payment if an event occurs that is not within the control of the Claimant, who is affected by such event and who could not, by reasonable diligence, have avoided. Such an event shall be considered a "Force Majeure" event, and shall include, but not be limited to, the following: fire, flood, explosion, act of God, act of a public enemy, war, blockade, public riot, or similar catastrophe. However, before the right to terminate or renegotiate this Condition of Payment may be exercised, the Claimant the Fund shall first meet with the Claimant in a good faith attempt to address the consequences of such an event. If it is decided to terminate this Condition of Payment, the Fund shall determine which costs incurred to date by Claimant shall be eligible for reimbursement based on Claimant's submittal of such costs for payment. If it is decided to renegotiate this Condition of Payment, Attachment B, the Payment Schedule, shall be amended in writing to reflect the renegotiations outcome. Such amendment shall be deemed a part of this Condition of Payment and is hereby incorporated by this reference.
- 8. Key Monitoring Wells.** The monitoring wells that are to be used to monitor the progress of the reduction of the contamination levels of the COCs are identified in Attachment A, Section 4, as the "Key Monitoring Wells." Following its review of the Baseline Data, the Regulator or the Fund may decide to change the wells designated as Key Monitoring Wells by requiring new and/or different monitoring wells to be installed and sampled as Key Monitoring Wells. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional monitoring wells and conducting the associated sampling and analysis. If the Claimant disagrees with the Regulator's or the Fund's decision, the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulations with respect to this matter.
- 9. Perimeter Monitoring Wells.** The monitoring wells that are to be used to evaluate the perimeter groundwater conditions of the Area of Concern are identified in Attachment A, Section 5, as the "Perimeter Monitoring Wells." Following its review of the Baseline Data, the Regulator or the Fund may decide to change the wells designated as Perimeter Monitoring Wells by requiring new and/or different monitoring wells to be installed and sampled as Perimeter Monitoring Wells. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional monitoring wells and conducting the associated sampling and analysis. If the Claimant disagrees with the Regulator's or the Fund's decision, the Claimant shall have the right to request a Fund Manager or Division Chief decision pursuant to the procedures set forth in Article 5 of the Fund Regulations with respect to this matter.
- 10. Adequacy of Monitoring Wells.** If, after the Fund has issued a Start Work Notice, the Regulator or the Fund concludes that one or more of the groundwater monitoring wells is not representative of groundwater quality in the vicinity of the monitoring location, then the Regulator or the Fund may require the installation and sampling of one or more new monitoring wells. These new monitoring wells will be designated as Key or Perimeter

Monitoring Wells and will be included in their respective monitoring well categories. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any such additional monitoring wells and conducting the associated sampling and analysis.

- 11. Split Samples.** The Claimant shall provide a minimum of seven (7) days' written notice to the Fund and the Regulator before conducting any sampling event proposed for the development of the Baseline Data or the evaluation of the attainment of Remediation Milestones for purposes of Remediation Milestone Payments. Such notice shall be provided to enable the Regulator to conduct split sampling. If split samples are taken, and the results indicate different concentration levels for any COC in one or more monitoring wells sampled, then the samples with the higher concentration levels shall be used. However, such higher concentration samples shall not be used if the sum of the COCs for the wells sampled shows a difference of 100 percent or greater between the split samples. For example, if the sum of the BTEX COCs for the wells sampled is 4500 for one split sample and 9000 or greater for the other split sample, then a second round of split sampling must be performed. The Regulator shall forward to the Claimant the invoices for all split sample work for payment. The eligible costs for split sample work that exceeds the scope of work included in the negotiated fixed price for this Condition of Payment shall be paid by the Fund on a time-and-materials basis.
- 12. Verification Sampling.** The Fund shall have fifteen (15) days from receipt of the 100% milestone report results (as described in Section 15.E below) to approve the 100% milestone payment request. However, the Regulator may require the installation and sampling of a reasonable number of additional monitoring wells and/or soil borings to confirm attainment of the 100% remediation milestone. If such additional wells and/or soil borings are required, the Fund, after consultation with the Regulator, shall have fifteen (15) days from the receipt of the sampling results from these additional wells and/or soil borings to approve the 100% milestone payment. This Condition of Payment includes the cost for installation of one additional well. The Fund shall reimburse the Claimant on a time-and-materials basis for the eligible costs for installing any additional monitoring wells and/or soil borings and conducting the associated sampling and analysis. In either case the 100% milestone payment under this Condition of Payment shall not be payable until the results from all monitoring wells confirm that the concentrations for the COCs are at or below their respective PARs for each and every monitoring well.
- 13. Finality of Condition of Payment and Fixed Price; Price Exception.** This Condition of Payment shall be final and shall not be terminated except pursuant to the terms and conditions described in Section 7 above. In addition, the total corrective action fixed price identified in Attachment B, Section 1, shall not be increased except where one or more of the situations described in Subsections B, D and/or F of Section 7 is present. In this event the procedures applicable to those sections shall be followed. In all other situations the fixed price shall not be increased. These other situations include, but are not limited to: unanticipated iron fouling of a system, inadequate winterization, well clogging because of biological activity or sedimentation, increased costs, loss of utilities, modification to the system to meet the remediation goals, and changes in regulatory requirements from any regulatory agency, including the Regulator.
- 14. Changes in Contaminant Levels.** The Claimant shall notify the Fund and the Regulator telephonically, with confirmation in writing, as soon as practicable after the Claimant becomes aware of any significant change in contaminant levels. For purposes of this Section "any significant change" includes, but is not limited to, the following:

- A. An increase of total contaminant concentrations has occurred in any well greater than thirty (30) percent from the last measured concentrations for that well.
- B. Unanticipated measurable free product is found in any monitoring well.
- C. The remediation system has been shutdown for more than a week regardless of the cause.
- D. A significantly increased risk of impact or an actual impact to sensitive receptors, such as elevated VOCs in the ambient air, in water distribution lines, or in water supply wells, has occurred.

15. Performance Criteria and Payment Schedule: Payments shall be made when the Fund determines that the performance criteria described below have been achieved. A letter from the Regulator assessing whether such performance criteria have been achieved must accompany the Claimant's written payment request.

- A. **Start-up Milestone:** The Fund shall reimburse the Claimant the percentage set forth in Attachment B, Section 2.A, when all of the following criteria below have been satisfied and reported in the "Start-up Milestone Report."
 - 1) The remediation system has been installed and functionally tested. The Claimant shall provide the Regulator with forty-eight (48) hours' written notice to observe the installed, functioning system.
 - 2) The Remediation System Start-Up and As-Built Drawings have been submitted to the Fund and the Regulator.
 - 3) As specified in Section 3 of Attachment A, groundwater samples have been taken from each Key Monitoring Well and lab results for these samples have been submitted for inclusion in the Baseline Sampling Event.
 - 4) The concentrations of the COCs in the groundwater samples analyzed, pursuant to Section 15.A.3 above, for each Key Monitoring Well have been calculated to define the Baseline Data.
- B. **25% Milestone:** The Fund shall reimburse the Claimant the percentage set forth in Attachment B, Section 2.B, when there has been attained a 25% reduction of the sum of the COCs for BTEX from the Baseline Data levels in the Key Monitoring Wells. This reduction shall be documented in the "25% Milestone Report." **Note:** Any of the quarterly monitoring reports described in this Section 15 may serve as a remediation milestone report if identified as such.
- C. **50% Milestone:** The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.C, when there has been attained a 50% reduction of the sum of the COCs for BTEX from the Baseline Data levels in the Key Monitoring Wells. This reduction shall be documented in the "50% Milestone Report."
- D. **75% Milestone:** The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.D, when there has been attained a 75%

reduction of the sum of the COCs for BTEX from the Baseline Data levels in the Key Monitoring Wells. This reduction shall be documented in the "75% Milestone Report."

E. 100% Milestone Attained: The Fund shall reimburse the Claimant the additional percentage set forth in Attachment B, Section 2.E, when the specified PARGs have been attained for each COC identified in Table 1 of Attachment B in each of the Key and Perimeter Monitoring Wells, except as otherwise provided in Section 12 above. Accordingly, each Key and Perimeter Monitoring Well must have concentrations below the PARGs for each COC. The attainment of PARGs for each well shall be documented in the "100% Milestone Attained Report."

F. 100% Milestone Maintained: The Fund shall reimburse the Claimant the remaining percentage set forth in Attachment B, Section 2.F, when the specified PARGs have been maintained for each COC identified in Table 1 of Attachment B in each of the Key and Perimeter Monitoring Wells for a period of four (4) consecutive quarterly sampling rounds after the remediation system has been shut down. Accordingly, each Key and Perimeter Monitoring Well must have concentrations below the PARGs for each COC. If these levels are not maintained for four (4) consecutive quarterly sampling rounds, then the remediation system shall be re-started and operated until the PARGs are once again attained for each well and COC. Once the PARGs have again been attained, the remediation system shall be shut down and monitored until the PARGs have been maintained for a period of four (4) more consecutive quarterly sampling rounds. If the levels are again not able to be maintained following shutdown of the remediation system, the Claimant forfeits all rights to payment of this remaining percentage. The maintaining of the PARGs for each well for the applicable time periods specified above shall be documented in the "100% Milestone Maintained Report."

16. Entire Understanding. This Condition of Payment contains the entire understanding between the Fund and the Claimant with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral negotiations and understandings between them regarding the subject matter hereof. This Condition of Payment may be amended only in writing signed by the Claimant.

17. Authority to Sign Condition of Payment. The person signing this Condition of Payment represents and warrants that he/she has the express authority, right and power to sign this Condition of Payment.

Claimant

Date

Attachment A**Regulatory Requirements**

- 1. Scope of Work:** The Pay-for-Performance Condition of Payment applies to the following scope of work:

A. Baseline Sampling Report: The Baseline Sampling Report shall document baseline conditions to be used in determination of performance milestones. The Baseline Sampling Report shall include the following:

- 1) A brief written discussion of sampling methodology.
- 2) A table showing the sampling results of all key monitoring wells included in the baseline sampling event. The PARCs should be referenced in this table.
- 3) A table showing the Total Contaminant Concentration and each of the performance milestone concentrations.
- 4) A figure showing the location of all key monitoring wells and perimeter wells.
- 5) Analytical reports and field data sheets.

Note: The tables to be included in this report can be presented in any format, as long as all requested data is presented.

B. Remediation System Design, Construction, and Operation: The remediation system shall be designed, constructed, and operated to achieve reduction of soil and groundwater contamination to levels at or below the PARCs provided in Section 2.

C. Remediation System Startup and As-built Report: The Remediation System Start-up and As-built Report shall include the following:

- 1) A brief written summary of the field activities performed to install and start-up the remedial system. This discussion will include a description of all deviations from the remedial system design as presented in the approved Corrective Action Plan.
- 2) As-Built Drawings.
- 3) A copy of the Start-Up Reports that are required by the Bay Area Air Quality Management District (BAAQMD), Regional Water Quality Control Board, and any other regulatory agencies.
- 4) A table showing the influent and effluent analytical data for the soil vapor and groundwater treatment systems.
- 5) A table presenting the remedial system operation data collected during the start-up period. This table should include flow rates, vacuum applied, extraction wells in use, and any other data collected which will be used any calculations presented.

- 6) A table presenting mass removal data for Total Petroleum Hydrocarbons as Gasoline (TPHg) and Benzene. This table should include mass removal rates observed during the monitoring period and cumulative mass removed during the monitoring period.
- 7) All field data sheets and analytical reports shall be included.

Note: The above tables can be presented in any format or combination as long as all the necessary information is presented.

D. Monthly Operation and Maintenance (O&M) of Remediation System:

- 1) O&M monitoring should be consistent with requirements of the BAAQMD and NPDES permits and all other necessary permits.
- 2) Influent samples should be collected on a monthly basis. These samples should be analyzed for TPHg by United States Environmental Protection Agency (USEPA) Method 8015 and Benzene, Toluene, Ethylbenzene, and Total Xylenes by USEPA Method 8020.

E. Quarterly Sampling of all Monitoring Wells:

- 1) Except for the last monitoring round before final payment is requested, a monitoring well can be eliminated from the monitoring program if Chemicals of Concern identified on Table I are detected at levels below the corresponding PARCs in groundwater samples for four consecutive monitoring rounds. All key and perimeter monitoring points must be sampled in the last monitoring round before final payment is requested.
- 2) Quarterly sampling shall be conducted for all monitoring wells and for all key monitoring points. Quarterly sampling shall be conducted for perimeter monitoring wells until total concentrations of Chemicals of Concern have been reduced by 50 % from the baseline. If a perimeter monitoring point meets this criterion, then its monitoring frequency can be reduced to twice a year in spring and fall.
- 3) Groundwater samples shall be analyzed for TPHg by USEPA method 8015 and BTEX by USEPA method 8020. On an annual basis, groundwater samples collected from wells ___ and ___ shall be analyzed for fuel oxygenates and additives by USEPA Method 8260.

F. O&M and Monitoring Reports:

- 1) Reports describing O&M and monitoring shall comply with all applicable permit requirements.
- 2) All reports submitted under the requirements of the BAAQMD and NPDES Permits shall be copied to the Regulator.
- 3) O&M and Monitoring Reports shall contain the following:
 - a) A brief description of the field activities that occurred during the previous quarter.
 - b) The amount of remedial system downtime should be presented, including the causes of the shutdowns.

- c) If any significant modifications or additions are made to the remedial system, the reasons for the changes will be discussed and the As-Built Drawings modified.
- d) Figures showing the site plan, groundwater gradient maps, rose diagrams, all monitoring and remediation wells on and off site, and iso-concentration contours for TPHg and Benzene shall be presented.
- e) A table presenting the well construction details, current depth to water, and an assessment of whether the screens are submerged.
- f) Time-Trend plots for TPHg and benzene in all monitoring wells and remedial system influent shall be presented. These plots should include the PARG.
- g) Plots of cumulative mass removal of TPHg and Benzene over time will be presented.
- h) A Time-Trend plot of Total Contaminants of Concern in wells used to determine the baseline. The baseline concentration will be included on the plot.
- i) A table presenting the soil vapor sampling shall be included in the report.
- j) A table presenting the depth to groundwater, groundwater elevation, and analytical data for each monitoring well. This table should reference the PARG for each constituent of concern.
- k) A table showing the influent and effluent analytical data for the soil vapor and groundwater treatment systems.
- l) A table presenting the remedial system operation data collected during the start-up period. This table should include flow rates, vacuum applied, extraction wells in use, and any other data collected which will be used any calculations presented.
- m) A table presenting mass removal data for Total Petroleum Hydrocarbons as Gasoline (TPHg) and Benzene. This table should include mass removal rates observed during the monitoring period and cumulative mass removed during the monitoring period.
- n) All field data sheets and analytical reports shall be included.

Note: The above tables can be presented in any format or combination as long as all the necessary information is presented. All tables must contain all historical data.

- 4) The O&M and Monitoring Reports shall be prepared quarterly and submitted to the Fund and Regulator within 45 days of the sampling event.
- 5) Risk Assessment:
- 6) A Risk Assessment will be performed during the verification monitoring period. The purpose of the Risk Assessment will be to evaluate the remaining risk at the site. The results of the Risk Assessment will be used to assess whether the site may be closed, or if additional remediation will be required.

- 7) The Risk Assessment shall be submitted with the final Verification Monitoring Report. The Risk Assessment shall be completed according to State of California Guidelines.
2. **PARGs:** The cleanup PARGs in this agreement shall be:
- A. Groundwater Contamination in Perimeter Wells/Points (Perimeter Zone):**
Groundwater PARGs in perimeter wells are presented in Table 1.
 - B. Groundwater Contamination in Key Monitoring Wells (Dissolved-Phased Zone):**
Groundwater PARGs in dissolved-phase key monitoring wells are presented in Table 1.
 - C. Free Product in Key Monitoring Wells:** Free product has not been reported in monitoring wells at the site. In the event free product is discovered, the Fund and Regulator, and other appropriate regulatory agencies, shall be notified within 24 hours.
 - D. Surface Water:** Surface water has not been impacted at this site. In the event that a surface water impact is discovered, the Fund and Regulator, and other appropriate regulatory agencies, shall be notified within 24 hours.
 - E. Other Affected Receptors.** The residence located on the adjacent parcel to the north is a potential receptor due to the concentrations of reported at the site and the shallow occurrence of groundwater. Soil vapor samples will be collected from the four shallow vapor sampling probes located along the property boundary on a semi-annual basis for the first year and during the verification monitoring period. Soil vapor samples shall be analyzed for TPHg and BTEX.
3. **Baseline Data:** The baseline monitoring points for this Condition of Payment consists of monitoring wells __, __, __, __, __, and __. All sampling and sample handling shall be in accordance with directives issued by the Regulator and with standard industry practices of quality assurances and quality control. Detection limits for Chemicals of Concern identified in Table I shall be set at or below the corresponding PARG.
4. **Key Monitoring Wells:** Key Monitoring Wells to assess the progress of the reduction of contamination levels shall consist of wells __, __, __, __, __, and __. Groundwater samples shall be analyzed for the Chemicals of Concern identified in Table I using the methods directed by the Regulator. These wells are subject to change by mutual written agreement between the Claimant and the Fund after the results of the baseline sampling are available. Any dispute regarding designation of the Key Monitoring Wells must be resolved prior to any payment being made under this Condition of Payment.
5. **Perimeter Monitoring Wells:** Perimeter monitoring wells shall consist of wells __, __, __, __, __, and __. These wells will be analyzed for the target Chemicals of Concern identified in Table I using the methods directed by the Regulator. These wells are subject to change by mutual written agreement between the Claimant and the Fund after the results of the baseline sampling are available. Any dispute regarding designation of the Perimeter Monitoring Wells must be resolved prior to any payment being made under this Condition of Payment.

6. Groundwater Treatment System Monitoring: Water sample lab data used to support performance criteria for payment shall show the Contaminants of Concern that were present during the baseline sampling. As in the case for the baseline monitoring, samples should be analyzed using methods directed by the Regulator. Milestone reports shall include tables showing contaminant concentrations in the monitoring wells sampled and graphs showing total reduction in contamination from baseline data. The data graphed and method of calculation of data shall also be provided.

7. Site Closure: If at any time during the execution of this contract, the concentrations are reduced to the level deemed acceptable for closure by the Regulator, the goals of this contract shall be deemed to have been met. The remaining payment(s) shall be reimbursed upon submission of the closure letter and summary to the Fund.

Attachment B**Payment Schedule**

1. **Fixed Price:** The Claimant agrees that the total corrective action fixed price to achieve PARGs, as set out in this Condition of Payment, is \$____, ____.
2. **Remediation Milestone Payments:** Payments shall be made when the Fund determines that Remediation Milestones have been attained. The Payment Schedule, as described in the subsections of Section 15 in the Condition of Payment and referenced below, and the corresponding percentages of the total price that will be reimbursed to the Claimant, are as follows:

<u>Subsection</u>	<u>Remediation Milestone</u>	<u>Payment (%)</u>
A. 15.A.	Start-up	35
B. 15.B.	25%	15
C. 15.C.	50%	15
D. 15.D.	75%	20
E. 15.E.	100% attained	5
F. 15.F.	100% maintained	10

Table 1

Chemicals of Concern (“COCs”)	Preliminary Active Remediation Goals (“PARGs”)
TPHg	1,000 ppb
Benzene	100 ppb
Toluene	200 ppb
Ethylbenzene	500 ppb
Xylenes	300 ppb
MTBE	200 ppb

Attachment C**Sample Calculation of Attainment of Remediation Milestones**

This example shows how to calculate whether a Remediation Milestone has been attained. Two different methods are used, depending on which Remediation Milestone is involved. The first method applies to the Intermediate Remediation Milestones; the second applies to the 100% Remediation Milestone.

Intermediate Remediation Milestone Calculation:

Intermediate Remediation Milestones are the 25%, 50% and 75% milestones. The calculation method described here is a simplified method that provides a rough measure of the total mass of hydrocarbons present at a site at the initiation of remediation (i.e., the Baseline Data) and as remediation progresses. Although PARCs have been established for Total Petroleum Hydrocarbons (TPH) as well as BTEX, normally only BTEX concentrations will be used to assess completion of the Intermediate Remediation Milestones.

Assume for this example that the Baseline Sampling Event yields the following results for Monitoring Wells 1 through 4 (all in units of ppb):

<u>COC</u>	<u>MW-1</u>	<u>MW-2</u>	<u>MW-3</u>	<u>MW-4</u>	<u>PARG</u>
TPH	180,000	68,000	75,000	10,000	1000
B	34,000	9,800	16,000	4,800	100
T	39,000	4,600	24,000	320	200
E	3,000	3,000	970	200	500
X	15,000	9,200	5,100	510	300
Total BTEX	91,000	26,600	46,070	5,830	1,100

Add the Total BTEX concentrations calculated for each well to derive the “sum of the COCs” for the BTEX Chemicals of Concern (“COCs”) for all of the wells for this Baseline Sampling Event. This addition yields a total of 169,500.

Next, calculate the amount by which the Baseline BTEX concentrations must be reduced to reach PARCs. This amount is the difference between 169,500 and 4,400 (1,100 x 4 MWs) or 165,100.

Then, multiply this difference (165,100) by 25% to calculate the amount by which the difference must be reduced to reach the 25% Remediation Milestone. This reduction amount is 41,275. Thus, the 25% Remediation Milestone is reached when the Baseline BTEX concentrations have been reduced to 123,825 (165,100 - 41,275).

The 50% and 75%, Remediation Milestones are calculated in a similar fashion. Accordingly, the values are 82,550 and 41,275, respectively.

100% Remediation Milestone Calculation:

Attainment of the 100% Remediation Milestone is determined by evaluating whether PARGs have been attained for each COC at each monitoring well, including the PARG for TPH. For example, the PARG for benzene of 10 ppb would need to be attained for each monitoring well. Hence, for MW-1, the final measured value of benzene would have to be 10 ppb or less. MW-1 would also have to show that each of the other COCs was at or below its respective PARG. A similar result would be required for MW-3, and MW-8 in order to satisfy the 100% Remediation Milestone.